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The Solicitors' Journal and Weekly Reporter.

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NO. of Plaint, G.964.—In the COUNTY COURT of ESSEX, Holden at Southend, Equitable Jurisdiction between the EXECUTORS of the WILL of the late ROBERT HORNER, Plaintiffs, and JANE ROOTS, Defendant.—Any person in possession of or having KNOWLEDGE of any WILL, or who claims to be the PERSONAL REPRESENTATIVE or HEIR of or otherwise interested in the ESTATE of the late ALBERT EDWARD ROOTS, who died at No. 2, Upper Dukes Drive, Eastbourne, in the County of Sussex, on the 4th day of February, 1919, and who was a retired Civil Servant (civil engineer), is requested to communicate at once with the undersigned Solicitors of the above-named Plaintiffs. Dated this 3rd day of August, 1927, Edward Betteley, Smith and Stirling, 5 and 6, Clement's-inn, Strand, London, W.C.2.

JOHN SAMUEL KEAST, deceased, of Wilmington-square. Any person having knowledge of a WILL, will they communicate with J. Collet, 24, Gt. Percy-street, King's Cross, N.

JOSEPH JOHN JACKSON, deceased.—Any person having knowledge of a Will of the above-named deceased, late of "Glenview," Hereford, Chemist, who died on the 4th day of June, 1927, is requested to communicate forthwith with either of the undersigned: T. A. Matthews, Solicitor, 6 & 7 King Street, Hereford; Timbrell, Deighton & Nichols, Solicitors, 90, Cannon-street, London, E.C.4.

RE DESCENDANTS of WILLIAM THOMAS and ELIZABETH HARRIS, also SUSANNAH BATCHELOR.—A relative of above on the great-grandmother side (Eaton), about 1790 to 1820, would be glad to hear of the descendants.—Eaton, Woodhall, St. Albans-avenue, Bournemouth.

SALVAGE.—Will the Solicitor of Mrs. MARY SALVAGE, widow of the late John Samuel Salvage, who died in August, 1926, at Great Missenden, kindly communicate with Miss Ada Watts, 62, High-street, Whitstable, Kent.

PARTINGTON.—The next-of-kin of ROBERT PARTINGTON, late of 46, Oxney-road, Rusholme, Manchester, who died on the 4th March, 1927, are requested to APPLY to the Solicitor, Duchy of Lancaster Office, London, W.C.2.

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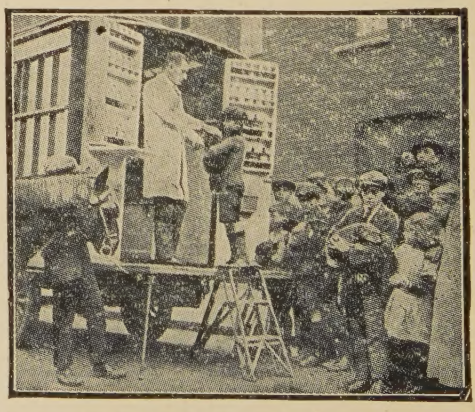
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Current Topics.

Damages for Nervous Shock.

THE RECENT Scottish case of *Currie* v. *Wardrop*, 1927, S.L.T. 383, shows that judicial opinion in Scotland no more than in England is unanimous on the question whether nervous shock in consequence of alarm for the safety of another is a legitimate element in the assessment of damages. There a young woman and her fiancé were walking arm-in-arm on the grass verge of a roadway when a motor vehicle, coming from behind, struck the young man, knocked him down, and the young woman, who was the plaintiff in the action, was apparently dragged down with him, and in consequence suffered general bruising and a severe shock through apprehension for her own safety, aggravated by anxiety for the safety of her fiancé. Was shock so far as due to apprehension for the safety of her fiancé a legitimate element to be considered in assessing damages which she was entitled to recover? Two judges out of five thought it was not, while the others considered that it was. In *Hambrook* v. *Stokes Brothers*, 1925, 1 K.B. 141, the Court of Appeal (SARGANT, L.J., dissenting) held that shock caused to a woman by what she saw with her own eyes, as distinguished from what she was told by bystanders, was a good ground of action. In the Scottish case the Lord Justice Clerk, who was in the minority, agreed with what he called the "powerful dissent" of SARGANT, L.J., in *Hambrook's Case*. As may be imagined from the divergence of view the cases exhibit, the point is by no means an easy one, and it is to be hoped that ere long a case involving the question may reach the House of Lords, from which tribunal alone we can now obtain an authoritative ruling.

A Host's Responsibility for his Guests' Behaviour.

A YOUNG gentleman recently invited some friends of his to dine with him at the well-known club premises Phyllis-court, Henley, hiring such premises, or perhaps part of them, for the purpose. They abut, of course, on the River Thames. After the feast the guests, or some of them, proceeded to empty a number of tins of petrol on the water and set fire to the spirit, and also to throw certain heavy garden seats into the river. For such pleasantries the host was prosecuted under certain sections in the Thames Conservancy Acts. He pleaded that he himself did not commit the acts for which he was prosecuted, and was acquitted. He stated, however, that "as a matter of honour" he held himself liable for the damage done, and he had in fact paid about a hundred pounds in respect of it. The reported account did not make it clear whether the whole of this sum was paid to the proprietors of the Phyllis-court Club, but, if this was the case, it can hardly be doubted that his debt of honour coincided with his civil liability, for a person who hires premises impliedly engages, in the absence of express provision, to surrender them in an undamaged condition. So far then as his guests damaged the premises he hired, he was presumably responsible in contract, for a clause exonerating him from such responsibility would be, to say the least, highly unusual. The responsibility in tort to any neighbour for damage, if any, done to his premises in the circumstances, would involve a nicer question of law. If he had brought a collection of dangerous wild beasts on the land, the classical judgment of *Rylands* v. *Fletcher*, 1868, L.R. 3 H.L. 330, is authority, that either he or the proprietors of the club, or both, would have been liable if they had escaped and done damage. If, on the contrary, he had brought a collection of dogs together, tame animals not known to be ferocious, the case might have been otherwise. "The true rule of law is that the person who for his own purposes brings on his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it at his peril." Applying this ruling, what would be the responsibility of this host or any other who, knowing the circumstances, deliberately collected the same guests together again, and gave them entertainment as before? Incidentally it may be noted that a feast which is merely noisy without being destructive, or a noisy crowd, may be legally a nuisance, see *Bedford* v. *Leeds Corporation*, 1913, 77 J.P. 430.

A Lodger's Garden Rights.

A TENANT complained to the magistrate at Willesden that his landlord had, on departure for a holiday, locked the door into the garden and taken the key with him. The consequence was that the applicant had no access to the place where the sanitary dustbin was kept, or to the coal shed. The magistrate said "It has always been held here that every occupant of a house has an equal right to a reasonable use of the garden. We shall deem you guiltless if you manage to

unlock the door, but not if you do any damage." The form of the magistrate's answer suggested a local custom, which might be difficult to prove. If on the contrary it was based on the general law, he might have had another difficulty in finding a case to support his ruling, though on the other hand no authority appears to be definitely against it. In *Underwood* v. *Burrows*, 1835, T.C. & P. 26, where the plaintiff was tenant of four rooms in a house let to him verbally, Lord ABINGER held that he was entitled, in the absence of agreement otherwise, to the use of a water closet, of a skylight illuminating the staircase, the door bell, and the knocker. In *Ewart* v. *Cochrane*, 1861, 4 Macq. 117, Lord CAMPBELL said (p. 122): "My lords, I consider the law of Scotland as well as the law of England to be, that when two properties are possessed by the same owner, and there was a severance made of part from the other, anything which was used, and was necessary for the comfortable enjoyment of that part of the property which was granted, shall be considered to follow from the grant." If then there was facility for the storage of coal in the garden but not in the rooms of the tenant, and there was a common sanitary dustbin kept in the garden, the above cases might be quoted on behalf of the tenant. The magistrate apparently assumed that the tenant would not be entitled to break out of the house to enjoy his rights, but even this might be arguable if there had been an outside water closet, for example, ordinary necessity might justify sufficient violence for access to it, and the disposal of household refuse in a dustbin, especially in hot weather, might be subject to the same considerations, denial of the easement giving rise to a nuisance which might result in serious disease. Perhaps the general amenities of a garden might be on a different footing, and tenants of flats or portions of houses would be wise to make stipulation beforehand.

Benefit on Transfer of Professional Footballer: Liability to Tax.

WE HAD occasion recently to refer to the decision of the House of Lords in *Seymour* v. *Reed*, *ante*, p. 421, where the House of Lords, reversing the decision of the Court of Appeal, and restoring the judgment of ROWLATT, J., held that the proceeds of a benefit match, in the shape of gate money, etc., which was granted to a professional cricketer, did not come within the "description of perquisites or profits," and was, therefore, not taken as such under Sched. E of the Income Tax Act, 1918. A somewhat similar case was heard by Mr. Justice ROWLATT: *Davis* v. *Harrison*, 43 T.L.R. 623, but the learned judge arrived at an opposite conclusion, and held that the sums in question were assessable to income tax. The material facts of *Davis* v. *Harrison* were shortly, as follows:—In that case, the respondent, was a professional footballer, and had been engaged by the Everton Club under an agreement which provided that the respondent should have a certain weekly salary and also be entitled to bonuses. In April, 1920, the respondent was paid a sum of £500 in lieu of benefits. A further arrangement was made that at the end of ten years the respondent should receive £650 in lieu of benefits. Subsequently the respondent was transferred by the Everton Club to another club in consideration for the payment of £2,000 by the latter to the former. The Everton Club thereupon passed a resolution that, out of that sum, £650 should be paid to the respondent as accrued benefit, and this resolution was duly approved by the Football Association, according to the rules of which all such payments had to be sanctioned by the association. The material rule of the association, with regard to such payments on the transfer of a player from one club to another, provided that such sums might be paid by the transferring club to the player, "as a reward for loyal and meritorious service . . . in lieu of presumed accrued share of benefit," and what the Everton Club, in fact did, was to pay to the respondent on his transfer, the sum of £650, which they had guaranteed to pay him at the end of ten years, such transfer taking place one year before the date when the above sum of £650 would have been payable. In delivering his judgment in *Seymour* v. *Reed*, in the House of Lords, Lord PHILLIMORE expressed the opinion that a sum of money given by an employer to an employee even during the term of his employment, and even for meritorious services, might be a gift. ROWLATT, J., however, in *Davis* v. *Harrison*, pointed out that the question must in each case be a question of fact, and that the dicta of Lord PHILLIMORE were not to be read as meaning that the payment of a sum in such circumstances was in all cases to be regarded as a gift. The learned judge further came to the conclusion on the facts, that as a very large element of business entered into the case, and the payment not only arose out of the player's services but *for* his services, the payment in question was not in the nature of a gift. The Commissioners, however, appear to have been of opinion that the payment was not taxable, on the ground that the payment was in the nature of compensation for loss of employment. But, as ROWLATT, J., pointed out, the rules themselves contemplated the payment of such a sum as "a reward for loyal and meritorious service," and moreover, there was in fact no loss of employment whatever, inasmuch as the respondent was being transferred from one club to another, and was going out of the employment of the one into the employment of the other. He accordingly held that the sum in question was income, the payment of which had merely been accelerated, and that it was accordingly assessable to income tax.

Actions for Declarations against Government Departments.

AN IMPORTANT decision has recently been delivered by the Court of Appeal, which raised the question of the liability of Government Departments to be sued in actions for declarations arising out of contracts made by them. The department in question was the Air Council and the case *Rowland* v. *Air Council*, *The Times*, 26th June. The action arose out of a contract concerned with an invention, and the plaintiff, suing as trustee in bankruptcy of the inventor, claimed a declaration against the Air Council that he was entitled to receive certain sums as being the profit made by a firm of aeroplane designers through his invention, which had been disclosed to the firm by the Government Department in breach of contract, and he also claimed declarations that he was entitled to receive royalties and also compensation under the Patents and Designs Acts, 1907-1919. It will be observed, therefore, that the action was merely for a declaration. Now, under s. 10 of the Air Force Constitution Act, 1917, it is provided that: "The Air Council may sue and be sued, and may for all purposes be described by that name." The error into which most people seem to have fallen in interpreting the above provision was that the rights and liabilities of the Air Council had thereby been put on a different footing from those of other Government Departments, in respect of which there was no similar statutory provision. It must now be regarded as having been decided beyond all question by the above case that the rights and liabilities of the Air Council—and indeed of any other Government Department to which a similar statutory provision applies—are in no way affected thereby, and that they are the same as in the case of other Government Departments. Such department, therefore, cannot be sued in contract, the remedy of the subject being by Petition of Right, nor can this obstacle to suing Government Departments be surmounted by bringing an action merely for a declaration, as was unsuccessfully attempted in *Rowland* v. *Air Council*. Moreover, in any event, where a claim is made against the Crown for the use of patented inventions, an action for a declaratory judgment would be misconceived, since s. 29 of the Patents and Designs Act, 1907, as amended by s. 8 of the Patents and Designs Act, 1919, provides a special procedure for the determination of such claims.

The Conflict of Laws in relation to Contracts of Sale.

For many years foreign merchants and international lawyers have been concerned with the difficulties which arise when courts have to apply foreign law to contracts, either because the parties to them belong to different countries, or that performance has to take place partly in a country foreign to both, or that the contract has been concluded in such a country, or for some similar reason. The principles adopted by national courts differ widely as to what territorial, that is purely domestic, law is applicable; for instance, whether the law to be applied to a contract of sale of movables, the commonest and in many ways the most difficult case, is to be that of the country of the seller, that of the country of the buyer, or that of some third country. By territorial or purely domestic law is meant the whole body of a country's law, *minus* only the private international law of that country. It is obvious that the effect of a contract may be quite different according to the law applied to it, and uncertainty upon this question is a serious inconvenience to international trade.

In November, 1924, the International Law Association appointed a committee to examine and report upon the conflict of laws in relation to contracts, and this committee has, very wisely, been in consultation with the International Chamber of Commerce upon the subject. The result was a workmanlike draft Convention which was presented at the meeting of the International Law Association in Vienna last year, a draft Convention which is now, at the instance of the Dutch Government, under the consideration of the various national governments. Since this step was taken the committee has proceeded to consider how far it might be possible to make any report to the Association on the effect on contracts of sale of national rules as to "Ordre public." This aspect of the subject was considered by the committee at meetings early this year at Frankfort, and more recently at Ostend.

Some of the matters dealt with by the committee, especially some of the modifications of the draft Convention discussed at its recent meeting at Ostend, are of great importance, and as the matter has reached the stage of being officially before the governments concerned, it is desirable that public attention should be directed to it, so that the proposals should, before final adoption, be thoroughly understood by those concerned, or at least by such of their number as will take the trouble to make themselves conversant with the subject.

The original draft Convention dealt with contracts of sale, contracts for work and contracts for services. In this article we shall deal only with contracts of sale.

Contracts for the sale of immovables can be very briefly disposed of. The rule adopted in the draft Convention is, necessarily, that the law applicable to such sale shall be the territorial law (in the sense defined above) of the country where the property is situated, and that law is to determine whether the property is immovable. The really interesting subject is contracts of sale of movables, and to that we now proceed.

The basic conception of the draft Convention, as approved by the Association at Vienna, was that it should apply if the parties did not state in the contract, or otherwise clearly agree, that the territorial law, as determined by the Convention, should not apply. It was entirely within their option to contract out of the Convention, the only requirement being that the intention to contract out should be quite clear, and not be a matter of inference from more or less doubtful evidence; the burden of proof of such an agreement to contract out was thrown upon the party alleging it. But a suggestion has since been made for a modification of great import and very controversial character; by this modification words would be added to provide that the validity and interpretation of the agreement to contract out should be determined according to the territorial law which would have been applicable under the Convention if the parties had not contracted out. In other words, the very compulsion which it is one of the root notions of the draft Convention to avoid comes in, as it were, with a side wind.

The draft Convention contains another inevitable proviso, that the courts of any country may on grounds of "l'ordre public" refuse to apply the territorial law applicable according to the Convention. Each country seems to have its own conception of what "l'ordre public" consists in, and each will have to act upon its own conception. The words chosen for the English text, "public policy, morality, natural justice and positive law," are, with the exception of the last, as vague as the single comprehensive French term. The Germans similarly speak of "die guten Sitten und die Grundlage des staatlichen und wirtschaftlichen Lebens," which perhaps may be translated as "good morals and the principles of civil and economic life," another set of necessarily vague expressions to be interpreted according to the good sense and judicial temper of the courts applying them.

It is further provided that the Convention shall not apply to any question of the capacity of the parties to contract, or to the form of the contract, nor to any prohibition of sale as between husband and wife, parent and child, guardian and ward, or parties in a fiduciary relation the one to the other.

One other provision requires to be noticed. In and so far as arbitrators have to give decisions according to the law governing the contract, they shall apply the Convention.

The Convention, having settled the limits of its own application, goes on to lay down rules as to those contracts to which it does in fact apply.

The general rule is to be that the law applicable to contracts of sale of movables shall be the law of the seller, as determined by carefully drafted criteria to which we shall come presently. There are two classes of exceptions to this general rule of application of the law of the seller: cases where the law of the buyer is to apply, and cases where the law of the country where the contract is concluded, or where certain movables requiring registration are registered, is to apply. The law is in every case the territorial (purely domestic) law as defined above. In all cases the territorial law of the country where movables delivered are to be examined has a certain limited application. We shall return to all these exceptions later.

The application of the law of the seller was chosen as the rule, for the excellent reason that the duties of performance of the seller in a contract of sale are of a more varied and complicated nature than the duties of a buyer. It is fair that the party with the more onerous duties should not have the additional handicap of having to envisage those duties from the point of view of a foreign system of law. The exceptions in favour of the law of the buyer will be seen to refer to contracts either where both parties may reasonably be presumed to be on an equal footing as regards their knowledge of the law, or the buyer has the disadvantage of ignorance.

The law of the seller is determined thus: If the sale is effected by an individual in the course of commerce carried on by him, or by a firm, association or corporation, the law of the seller shall be the territorial law of the country where, at the date when the contract is concluded, the office, whether principal or branch, which concludes the contract, is situated; if the sale is effected by an individual, not in the course of commerce, his law shall be the territorial law of the country where he has his habitual residence at the date when the contract is concluded. "Habitual residence" is not to be confused with "domicile," an expression having such varied meanings in different systems of jurisprudence that it is one to be avoided in an international convention. In English law, domicile is a matter of intention, often to be inferred only from ambiguous facts. Habitual residence is a much

more notorious and easily determinable datum. A good rough test is, "where does the person habitually sleep?"; see *The Oldham Case*, 1869, O'M. & H., at p. 158; *R.* v. *Norwood*, 1867, L.R. 2 Q.B. 457; and *Manning* v. *Manning*, 1871, 24 L.T. 196.

Now for the exceptions. The law of the buyer, determinable on the same principles as those set out above for settling the law of the seller, is to apply: (*a*) where the seller or his agent or representative concludes the contract during a visit to the country of the buyer; (*b*) where the agent or representative of the seller has his office, whether principal or branch, which concludes the contract, in the country of the buyer, and the agent or representative concludes the contract [in his own name]; (*c*) where the agent or representative of the seller has his office, whether principal or branch, which concludes the contract, in the country of the buyer, and the movables at the date of conclusion of the contract are situated in the country of the buyer.

Whether the words in brackets in (*b*) above, "in his own name," should stand or not is a question likely to be much discussed. Their omission would make a big breach in the general rule of the application of the law of the seller, for innumerable commercial houses have foreign branches. There are many reasons, however, why the law of the buyer should be applied in every case where the contract is concluded through an agency of the seller in the country of the buyer, even though the contract is not concluded in the name of the agent. If this rule were adopted it would, moreover, not be necessary to provide for the special case of movables which are situated in the country of the buyer at the date of the contract. Under this provision as at present drafted, it might be very difficult for a buyer to know or to prove whether the movables were in the country at the date of the contract, and part of the goods contracted to be sold might be already manufactured and in the country, while the remainder would have to be manufactured and imported completely to fulfil the contract.

The second class of exception to the application of the law of the seller includes the two following: (i) When the contract of sale is concluded on a stock or other exchange or at a fair, or by auction, or, in case of sale by judicial process, by order of the court or under an execution, the territorial law of the country where the contract is concluded shall apply; (ii) The law applicable to contracts of sale of ships, vessels, and aircraft which are registered shall be the territorial law of the country of registration.

The application of the territorial law of the country of examination of movables by the party receiving them is to be to: the method of examination; the manner of giving notice in case of defects in the movables or any other breach of contract; the manner of notifying the rejection of the movables or claims subject to which the movables are accepted; the time within which the examination and notice are to be effected; and the duties and rights of the party receiving the movables as to dealing with them if rejected.

There are strong reasons for arguing that the law of the place where the goods are to be examined by the party receiving them should regulate also the remedies of the buyer in case of defects in the goods or of any other breach of contract, i.e., whether the buyer can reject or can merely claim damages, as well as the manner in which and the time within which he must pursue his remedies. The disadvantage of this modification would be that it would constitute a further departure from the law of the seller and a departure which would affect the seller in his performance of the contract; the obligations of the seller as regards performance are intimately connected with the rights of the buyer on any failure in performance. On the other hand, it is important that a buyer should not, because of the difficulty or delay unavoidable in ascertaining the provisions of the law of the seller as to remedies available for breach of contract, run the risk of losing his legal remedy by failing to avail himself of it in time, or by taking some step inconsistent with it. On the whole, it appears to be desirable that the remedies for breach of contract, as well as the manner of applying them, should be determined by the law of the place where the goods have to be examined, which would often, but not always, be the law of the buyer.

Some Legal Aspects of Town Planning.

By RANDOLPH A. GLEN, M.A., LL.B.
(*Editor of "Glen's Public Health,"* 1925 *Edition.*)

(*Continued from p.* 642.)

XI.

Having dealt in previous articles with the few town planning cases in courts,(1) and with two typical and recent inquiries into the merits of schemes,(2) I now come to the decisions of the Minister of Health, which have been very numerous. Until August, 1922, applications for permission to develop land pending the preparation of town planning schemes were made direct to him. In that month the Town Planning (General Interim Development) Order, 1922, was issued, and since then the applications to the Minister have been made only in cases where the local authority and the applicant have been unable to agree. The disputes are heard before inspectors at public local inquiries, and the Minister's decisions are given upon the reports of these inspectors.

During the year 1923 there were thirty-three appeals under this Order. Of these, two succeeded, four failed, twenty-three were settled amicably, and six were under consideration when the Minister's annual report was issued. The following decisions are of interest. An owner desired to erect a garage for motor lorries on land the only access to which was along minor estate streets already developed for residential purposes. Permission to do this was refused. Where, however, the proposed garage was in a main road, the fact that the surrounding land had been developed for residential purposes was held to be no bar to the garage. Where the surrounding land was subject to restrictive covenants against the erection of premises for trade purposes, permission to erect stables in connection with a haulage business in a residential street was refused. A cycle repair shop was situated on the fringe of a village centre of mixed development and in close proximity to sites already devoted to shopping and other general purposes. Permission to adapt it for use as a packing warehouse was granted. Authority to use as a builder's yard premises adjacent to residential property and in a neighbourhood intended for further residential development was restricted to a period of seven years. The Minister confirmed an agreement between an owner and the authority preparing a town planning scheme whereby, if certain land was not converted into a golf course, or being so converted ceased to be used as such, the land should be acquired by the authority as an open space. The price was fixed in the agreement, and was to become payable if and when the land was acquired, and the value of various buildings on the land was left to be determined by agreement or arbitration when the time came.

The number of appeals in 1924 was slightly less, in spite of the larger area brought under town planning powers. In addition to the six left over, twenty-nine fresh appeals were received. Of these thirty-five, the Minister allowed four and dismissed three. Twenty-five were settled, and three were left over. As examples of the matters dealt with, it may be

(1) Namely, *In re Ellis and Ruislip-Northwood U.D.C.*, *ante*, pp. 342, 358; *Hollidge* v. *Ruislip-Northwood U.D.C.*, *ante*, p. 358; *Mackenzie* v. *Abbott*, *ante*, p. 358; *Epsom R.D.C.* v. *Palser*, *ante*, p. 379; *McLean* v. *Hunslet R.D.C.*, *ante*, p. 379; and *In re Forsey and Hollebone's Contract*, *ante*, p. 574.

(2) Namely, *Sidcup Urban Scheme*, *ante*, pp. 419, 440; and *Sevenoaks Urban and Rural Schemes*, *ante*, pp. 479, 554, 627 and 641.

mentioned that permission was given for the extension of workshops belonging to an institution, situated in a residential area, and erected before the scheme came into operation. The elevations of the proposed new buildings were not displeasing, and the processes to be carried on were innocuous. Conditions, however, were attached preventing the use of the buildings so as to injure the amenities of the neighbouring property. But where a local authority proposed to consent to the erection of a motor omnibus depot on a site largely surrounded by small dwelling-houses, the Minister allowed the appeal of the aggrieved residents on the ground that its erection would be inimical to the amenities of the neighbourhood and it had not been shown that suitable alternative sites could not be found. The bulk of an estate having been sold in building plots and dwelling-houses having been erected thereon, it was proposed to sell the remainder for a shopping centre. As it appeared to the Minister that the erection of shops on this site was likely to depreciate the dwelling-houses, permission was refused. The erection of a large garage on a main road in a shopping area was allowed on condition that the garage was set back sufficiently far to provide a standing place for vehicles and to avoid congestion of traffic on the road. Riverside shops to serve a neighbouring residential district were sanctioned with a proviso as to their maintenance in good order and condition so as to preserve the amenity of the aspect from the river. An appeal against a refusal to permit building on land reserved as an open space was withdrawn on the understanding that the authority would purchase the land at a price to be fixed, if necessary, by the official arbitrator.

The number of appeals received during the year 1925 increased to forty-seven. These, with the three left over from 1924, were dealt with as follows:—Upheld, nine; dismissed, eight; settled, twenty-eight; and left over, five. Of these appeals, eight were against one authority, and in his annual report the Minister says: "whose town planning administration is being carefully watched"! In one area there was a keen controversy as to whether a site adjoining a main road should be reserved as a shopping centre or for residential purposes. It was held that though main roads may generally be more suitable for shopping and business purposes than for residential development, it does not follow that shops must be allowed on main roads indiscriminately, or that residential development is not to be expected on these roads. The existence of a belt of trees which it was desired to preserve, and of good residential property on the length of road concerned, was considered to indicate that the main road frontage was suitable for residential development, and the reservation by the local authority for shopping was reversed. The following interesting conditions were imposed when authorising the erection of a public garage in a part of a residential area bordering on industrial development, namely: (*a*) that accommodation should be provided for non-commercial vehicles only; (*b*) that no power-driven machinery should be installed other than a hand drill or other similar tool operated by electricity; (*c*) that any petrol pump installed should be for the service of the vehicles garaged on the premises and not of calling or passing traffic; (*d*) that no advertisements should be displayed other than one projecting sign, indicating the title of the garage; and (*e*) that the building line was to be observed.

Where there was a dispute between the town planning authority and the county council as to the better of two alternative lines of main road widening, the Minister decided in favour of the county council as they would have to pay the piper, and there was not very much difference on merits between the two. While intimating that "restrictions on density should normally be sufficient to give reasonable protection against development by means of an undesirable class of house property," and that "restrictions as to size and value are generally to be deprecated and could be approved only where essential to prevent serious interference with amenity and value," the Minister vetoed a proposal to develop a small site with a number of houses of inferior size and value to neighbouring houses, and at a density much in excess of the neighbouring houses.

On an appeal against a refusal to permit the construction of slipways and other works for the repair of barges and tugs on an island in the Thames between Brentford and Kew Gardens, it was agreed at the hearing that the proposed development should be permitted on condition that the owners planted trees and shrubs on a strip of land forty-five feet wide on the bank of the island opposite Kew, and conveyed the strip to the local authority, free of cost, to be maintained as an open space, but not with public access. This was a notable achievement in preserving the amenities of this part of the river.

In spite of strenuous opposition the Willesden Urban District Council was allowed to re-construct and extend a smallpox isolation hospital in an area proposed to be allocated by the Kingsbury Urban District Council for residential purposes. The nearest existing residential development was half a mile away, and it was not considered that the erection of the hospital would have a sufficiently detrimental effect on the development of the area for residential purposes to justify the withholding of permission. It was intimated that it could not be admitted that isolation hospitals must necessarily be located in areas which would not be affected by town planning schemes. As to density, permission was given to development on a small area of land in separate ownership, but extending into two density zones, although the density restriction in the lower density zone was exceeded, on the ground that the development would not be in excess of the average density for the two zones, and compliance with the density restrictions in each zone separately would involve unnecessary hardship.

The number of appeals received in 1926 increased by ten, from forty-seven to fifty-seven. These, with the five left over, were dealt with as follows: Upheld, five; dismissed, thirteen; settled, twenty-nine; and left over, fifteen. Except in the two cases mentioned below, no information as to these appeals will be available until the Minister's Annual Report is published. In my concluding articles, I propose to give accounts of the two appeals which have been reported.(3)

(3) *Re Gaze & Sons and Ham U.D.C.*, Justice of the Peace Journal, 19th February, 1927, at p. 131, col. ii. *Re Disney and Esher and Dittons U.D.C., Justice of the Peace Journal*, 26th, February, 1927, at p. 150, col. iii.

(*To be continued.*)

A Conveyancer's Diary.

Date of Accruer of Right to bring an Action on a Mortgage: *Purnell* v. *Roche*, 1927, 2 Ch. 142.

A POINT of considerable interest which, strangely enough, had never hitherto been the subject of a judicial decision, was recently considered by Mr. Justice Romer in *Purnell* v. *Roche*, 1927, 2 Ch. 142.

The facts of the case were briefly as follows: J.R. by mortgage dated 27th September, 1902, assured certain freeholds to the plaintiff by way of mortgage, subject to redemption on payment of the principal and interest on 27th March, 1903. J.R. and his successors in title had remained in occupation of the property since the date of the mortgage. On 23rd February, 1907, the plaintiff became, and afterwards continued to be, of unsound mind. Interest was paid on 31st January, 1907, to the plaintiff's husband as agent, and on 25th May, 1907, the mortgagor made another payment to the husband on account of interest due. Since then no interest had been paid under the mortgage and there was no evidence of a written acknowledgment of the

plaintiff's title. In 1926 a summons was issued by the mortgagee for the enforcement of the mortgage by foreclosure or sale.

The plaintiff contended that having regard to the Real Property Limitation Act, 1837, her right to bring the action for foreclosure, being an action to recover land must be deemed for the purposes of the Real Property Limitation Act, 1874, s. 3, to have first accrued on 25th May, 1907—the date of the last payment of interest on account of the mortgage.

If her contention was right her rights under the mortgage had been preserved by virtue of the Real Property Limitation Act, 1874, s. 3.

The defendants, on the other hand, argued in the first place that the husband had no authority to receive the interest on behalf of his wife on 25th May, 1907, and that, therefore, such payment must be treated as a nullity ; and secondly, that even if such payment was made under the mortgage within the meaning of the Limitation Act of 1837, the plaintiff's right to bring her action first accrued either at the date of the mortgage, or, at latest, on 27th March, 1903, when the estate of the mortgagee became absolute at law.

If their contention was right the plaintiff's unsoundness of mind, having supervened after the accrual of the cause of action, had not prevented the statutory period from running so as to bar her remedies.

Now, s. 1 of the Limitation Act, 1874 (taking the place of s. 2 of the Limitation Act, 1833), provides, amongst other things, that no person is to bring an action to recover any land but within twelve years next after the time at which the right to bring such action shall have first accrued to the person bringing the same. The meaning, in this connexion, of the words "shall have first accrued" are to be found from a consideration of s. 3 of the Limitation Act, 1833.

The material times mentioned in that section are the date of the assurance by virtue of which the person claiming became entitled to possession of the property, and the date when such claimant became entitled by reason of any forfeiture or breach of condition.

More than twelve years had elapsed between these dates and the date of the action in *Purnell* v. *Roche*. Hence the plaintiff's rights were barred.

Romer, J., in his judgment drew attention to the rather peculiar difference between the respective effects of payment of interest and a written acknowledgment. Payment of interest does not create or revive, nor is it deemed to create or revive a cause of action. The date of accrual of the cause of action is not affected by such payment, though, by virtue of the Amending Act of 1837, an action may be brought by a person claiming under a mortgage of land at anytime within twelve years next after the last payment of interest, notwithstanding that more than twelve years have elapsed since the cause of action first accrued. But when an acknowledgment in writing under s. 14 of the Limitation Act, 1833, is made, the claimant's right to bring an action is to "be deemed to have first accrued at and not before the time at which such acknowledgment . . . was given."

Landlord and Tenant Notebook.

Decontrol: Sub-Letting of Part by Tenant.

The decontrol provisions in the Rent and Mortgage Interest Restrictions Act, 1923, are of such a perplexing character that a perusal of any newly reported decision on that part of that Act often has the effect, especially if one does not carefully bear in mind the basic principles which have been decided by the cases, of leading to confusion. For that reason we shall deal briefly with the case of *Bedford* v. *Barnes*, a decision of His Honour Judge Barnard Lailey, K.C. (reported in *Law Journal County Courts Reporter*, 30th July, 1927), and examine its effect on the decision recently given in *Wilson* v. *Oakley*, 43 T.L.R. 521.

The facts in *Bedford* v. *Barnes* were shortly as follows : The respondent was the tenant of certain premises which came within the Rent Restrictions Acts, and which at the date of the passing of the Rent and Mortgage Interest Restrictions Act, 1923, down to the sub-letting of a part thereof to the applicant, had been continuously in the occupation and possession of the respondent. In July, 1926, the respondent sub-let a portion of the premises to the applicant. The applicant later took out a summons for apportionment, whereupon the question arose whether or not the premises were decontrolled. The material statutory provision in the Rent and Mortgage Interest Restrictions Act, 1923, to which reference should be made is s. 2 (1) of that Act. That section provides that, when the landlord is in possession of the *whole* of the dwelling-house at the passing of the Act, or subsequently comes into possession of the whole, the premises will cease to be controlled. According to the first proviso to that sub-section, where part of the dwelling-house is lawfully sub-let, the Act will not cease to apply to that part by reason of the landlord coming into possession thereof, and if the landlord is in or comes into possession of any part not so sub-let, the Act will cease to apply to that part, notwithstanding that a sub-tenant continues in or retains possession of any other part.

Let us examine now what *Wilson* v. *Oakley* actually decided. There it will be remembered a quarterly tenant had sub-let the whole of the premises to a sub-tenant, and on the latter vacating had re-entered into possession. The court held that the premises had become decontrolled, as the quarterly tenant was to be regarded as the "landlord." We ventured the opinion previously, in these columns, that the effect of *Wilson* v. *Oakley* must necessarily be to decontrol a great number of premises which were previously controlled. How then is *Wilson* v. *Oakley* to be reconciled, if at all, with *Bedford* v. *Barnes*, and with such decisions, given previously to *Wilson* v. *Oakley*, as *Catto* v. *Curry*, 1920, 1 K.B. 460 ; *Cohen* v. *Gold*, 1927, 1 K.B. 265, which are in effect similar to *Bedford* v. *Barnes* ?

Undoubtedly, according to *Wilson* v. *Oakley*, a quarterly tenant may be regarded as a "landlord" for the purpose of s. 2, and if one were to be logical one should say that whenever you have the relationship of "lessor" and "lessee" created, the lessor is in *every* case to be regarded as the "landlord" for the purposes of s. 2.

The courts, however, appear to make a distinction which seems to be as follows, viz., that for the purpose of the first paragraph in s. 2 (1), *any* tenant is to be regarded as the "landlord," provided that there is a sub-tenant holding from him, but that this rule is not to apply for the purposes of the proviso to that sub-section. In other words, wherever you have a structure (not necessarily the whole of a house), which is to be regarded for the purposes of the Rent Acts as a single unit, then, provided the *whole* of that unit is sub-let by the tenant, the latter is to be regarded as the "landlord" so that the premises will become decontrolled on the sub-tenant vacating and the tenant entering into possession (*Wilson* v. *Oakley*).

Where, however, the tenant does *not* sub-let the *whole* of such unit, but only a part thereof, the tenant (sub-lessor) is still to be regarded as the tenant, so that the first proviso to s. 2 (1) will come into operation, and the part so sub-let will not be decontrolled, by reason of the tenant (sub-lessor) coming into possession of that part. This is exactly what such cases as *Cohen* v. *Gold*, 1927, 1 K.B. 865, and *Catto* v. *Curry*, 1926, 1 K.B. 460, which were decisions previous to *Wilson* v. *Oakley*, decide, and this is what *Bedford* v. *Barnes*, a decision given subsequently to *Wilson* v. *Oakley*,

also decides. The learned county court judge therefore did not consider *Catto* v. *Curry* and *Cohen* v. *Gold* as having been affected by *Wilson* v. *Oakley*.

No doubt this ruling is open to the criticism that it is illogical, since a tenant who sub-lets is regarded as a landlord for the purposes of the first paragraph of s. 2, while this status is denied him for the purpose of other parts of that section. This appears, however, to be the only way in which the above decisions can be reconciled. Failing that, there is one other alternative which would lead to impossible results, viz., to hold either (1) That a tenant can never be a landlord, in which event there would practically be no decontrol, or else (2) That a tenant who sub-lets is in all circumstances to be regarded as the landlord, in which event practically every house which was previously controlled would become automatically decontrolled.

Reviews.

The Law, The Advocate, and The Judge. By The Hon. Mr. Justice McCardie. London : The Solicitors' Law Stationery Society, Ltd. 36 pp. Price 2s.

The inspiring reading delivered by The Hon. Mr. Justice McCardie before the Honourable Society of the Middle Temple on 19th May, 1927, and first published in the special number of The Solicitors' Journal, has now been published separately by direction of a Parliament of the Middle Temple. In a brief but interesting foreword, Mr. Alexander Macmorran, K.C., the Middle Temple Treasurer, draws attention to the antiquity of the Reader's office, and expresses the hope, which is widely cherished, that the revival of the ancient office will mark the opening of a new chapter in the history of the Inn. With the address is published (i) a letter written by Master Bruce Williamson, which appeared in The Solicitors' Journal for 25th June, 1927, and which discusses generally the renaissance of the ancient readings at the Middle Temple ; (ii) a photograph of the Middle Temple Hall ; and (iii) a list of the Masters of the Bench of the Middle Temple.

The work is got up in a manner that does great credit to the printers and publishers.

We can heartily recommend it to our readers as a worthy memento of a memorable occasion.

Books Received.

Reminders for Company Secretaries. Thirteenth Edition. Herbert W. Jordan. pp. viii and 45. Jordan & Sons, Ltd., Chancery-lane. 1s. net.

The English and Empire Digest. With Annotations. Vol. XXXIV.—Master and Servant—Mayor's and City of London Court—Medicine and Pharmacy—Metropolis —Mines, Minerals and Quarries. 1927, pp. xcvii and 756. Butterworth and Co., Bell Yard.

Mew's Digest of English Case Law. Quarterly Issue. July, 1927. This Part contains cases reported from 1st January to 1st July, 1927. Aubrey J. Spencer, Barrister-at-Law. Stevens & Sons, Ltd. ; Sweet & Maxwell, Ltd.

American Courts. Their Organisation and Procedure. First Edition. 1927. Clarence M. Callender, Member of the Philadelphia Bar. pp. viii and 284 (with Index). McGraw-Hill Publishing Co., Ltd., Bouverie-street, E.C.4. 15s. net.

The Ottoman Land Laws. With a Commentary on the Ottoman Land Code of 7th Ramadan, 1274. R. C. Tute, President of The Land Court, Jerusalem, Barrister-at-Law. pp. 207 (with Index). Stevens & Sons, Ltd. £1 net.

THE MIDDLESEX HOSPITAL.

When called upon to advise as to Legacies, please do not forget the Claims of the Middlesex Hospital, Which is urgently in need of Funds for its Humane Work.

Correspondence.

Completion of Sales by Bankers' Drafts.

Sir,—The August number of The Law Society's *Gazette*, p. 195, has some very interesting remarks on this, and I congratulate the Council on at last having paid some attention to a matter I have been engaged on for the past ten years and upwards. I have never had the slightest help from the Council or from any banker, or from the Bankers' Association.

I regret that a fellow practitioner has had to suffer inconvenience by the stupid condition of the law, and by the cessation of the practice of banks, which at one time was common, to give "marked" cheques. I have completed a great many purchases by "marked" cheques, that is a cheque which the customer draws on his bankers, and which the bankers mark as being good for the amount for which it is drawn. This provides for the difficulty which arises where a branch of a bank draws on its head office as (*pace* Bailhache, J., in *Ross* v. *L.C. & W. Bank*, 1919, 1 K.B. 1900) such a draft does not come within the definition of a bill of exchange. See also 1922, 1 A.C. 240, where the Privy Council declined to give an opinion as to whether "not negotiable" could be applied to a Bank's draft on itself.

To show the state of knowledge of banking law, I may say that the chairman of one of the biggest banks was of opinion that each of the many hundreds of branches of the bank was a separate entity, and that a draft by a branch on the head office or by the head office on a branch was capable of being marked "not negotiable." I have explained the matter to many bank directors and bank officials, and to the senior member for the City, but I cannot make any progress.

The absurdity of the position is that a Consol warrant can be marked "not negotiable," and so are all the joint stock banks' dividend warrants, as s. 95 of the Act of 1882, which was not cited to Bailhache, J., and of which nearly all my friends are blissfully ignorant, applies the provisions of the Act as to crossed cheques to a warrant for payment of dividend.

I somewhat lost heart when the British Bankers' Association told me somewhat cynically that what I wanted to accomplish was not their business, as the banks would not be liable if loss occurred.

I ought to add that I have seen the President of the Board of Trade, and explained, with great particularity and a very great expenditure of time and trouble, the position to the President and his advisers, and their reply is that the congested state of legislation does not permit of a simple section extending s. 95 to drafts drawn by a bank's head office on one of its branches or by a branch on its head office or a branch on a branch.

It is hoped that the importance of the subject will excuse the length of this letter and the number of first persons singular it contains.

80, Coleman Street, E. T. Hargraves.
London, E.C.2,
10th August.

Obituary.

Mr. F. H. E. WEBBER.

Mr. Frederick Herbert Edwin Webber, solicitor, and a member of the firm of Messrs. Webber & Coffin, 17 Hampshire Terrace, Portsmouth, died on Wednesday last, as the result of a collision with a motor car twelve days previously whilst he was cycling at Havant. Mr. Webber, who was admitted in 1909, was thirty-nine years of age, and was a member of The Law Society.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

SALE BY PERSONAL REPRESENTATIVES—IMPLIED PRE-1926 ASSENT—TITLE.

904. *Q.* A testator who died in 1908, bequeathed his leasehold property to his wife for life, and after her death to his children living at her death in equal shares, and appointed his wife and two others his executors. The wife is living. The leaseholds are to be sold. The vendor's solicitors contend that the executors can assign the leaseholds as personal representatives. In view of the fact that the land is settled land, should not a vesting deed be executed, and the assignment taken from the tenant for life ?

A. The contention of the vendor's solicitors is no doubt based on the A.E.A., 1925, s. 36 (6), (8) and (12), sub-s. (8), over-riding *re Verrell's Contract*, 1903, 1 Ch. 65. The pre-1926 law as to implied assent will be found in *Wise* v. *Whitburn*, 1924, 1 Ch. 460, and *Solomon* v. *Attenborough*, 1913, A.C. 76, and the circumstances in which executors can force a title on a purchaser years after their testator's death are discussed in *re Tanqueray Williaume and Landau*, 1882, 20 C.D. 465. If there had been implied assent before 1926 in this case, which would be the likeliest supposition, in view of the lapse of time since 1908, then on 1st January, 1926, the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*) would have operated to divest the legal estate from the executors and vest it in D as tenant for life. But if the executors conveyed with the recital that they had not assented, and the A.E.A., 1925 s. 36 (6) applies, the conveyance would divest D (and would do so even if she had not been executrix) in favour of a purchaser. This will depend on whether the assent referred to in sub-s. (6) can ever mean a pre-1926 assent. *Primâ facie*, sub-s. (12) limits the meaning of the word " assent " to post-1925 assents. But the sub-section applies to all post-1925 conveyances. Does it then apply to protect post-1926 purchasers under such conveyances from pre-1926 implied assents ? The opinion here given is that it does so, but, unless and until there is a decision to this effect, the opinion is also given that a purchaser cannot safely rely upon this interpretation. The purchaser in the present case, therefore, should press a requisition as to whether the executors, by allowing the widow to receive income beneficially or otherwise, have impliedly assented, and, if the answer shows that they have, should require title under the S.L.A., 1925.

SETTLED LAND AND WILL OF TESTATOR DYING IN 1926—TITLE.

905. *Q.* A died in April, 1926, having by his will made in 1924, appointed a married daughter to be sole executrix and two others to be " trustees of this my will." After making certain bequests, the testator gave his freehold property to his said daughter for life then to her issue, and failing issue to his other children equally. The executrix has one child only, aged about three years. The freehold was recently put up for sale by auction, and the question has arisen as to the appointment of trustees for sale. The tenant for life can apparently sell, but she cannot give a receipt for the consideration money. Will you please advise as to what steps should be taken.

A. The daughter can sell as executrix on the recital that she has not assented to the settled devise, see A.E.A., 1925 s. 36 (6), and can give receipt, see L.P.A., 1925, s. 27 (2) (as altered, but not to affect this power, by the L.P. (Amend.) A. 1926, Sched.) Alternatively, if she makes a vesting assent in her own favour as tenant for life under the S.L.A., 1925, ss. 5, 6 (*b*) and 8 (4) (*b*), and appoints a co-trustee under s. 30 (3), she can sell under the Act, and she and her co-trustee will receive the money. In strictness, the latter is the proper course to adopt if A's estate is fully administered. In this answer it is assumed that the trustees of the will are not trustees for the purposes of the Act within s. 30 (1) (i) to (iv).

DISCRETIONARY TRUST FOR DEBTOR.

906. *Q.* It is proposed to establish out of a public subscription a trust fund for the maintenance of A, and the trustees of the fund are to have an absolute discretion with regard to the amount to be paid periodically to the *cestui que* trust. The trustees understand that certain tradesmen creditors of A are awaiting the establishment of this trust fund and that the tradesmen then intend to apply for a garnishee order or seek some similar means of attaching the trust fund, or payments therefrom. The only case I have been able to find bearing directly on this matter is one *Cairncross* v. *Vander Westhuizen*, 1913, C.P.D. 639, where the South African court ordered, in similar circumstances to the above, the money in the hands of the trustees to be attached in execution. Is there any English decision directly on the point mentioned above, and has any such decision been affected by the judgment of the South African Courts in the case cited ? If so, is there any method which can be suggested to the trustees whereby the trust funds will be safeguarded from being taken by the tradesmen in payment of the *cestui que* trust's debts ?

A. Surely a protective or discretionary trust is indicated, something like s. 33 of the T.A., 1925, or those printed in the collections of precedents, see for example, " Prideaux," vol. iii, p. 130. To protect the fund from A's creditors, the trustees should have the nominal power to pay to his wife and children or others, though even that may not be absolutely necessary, see *re Bullock*, 1891, 60 L.J. Ch. 341, on which decision, the surplus would probably belong to the subscribers *pari passu*. It would be better, however, as above, to nominate other objects, so that A would not be entitled as of right to receive any of the fund. The practical effect would be to render it inviolable by his creditors, while enabling the trustees to apply what they thought fit for his maintenance.

SETTLED LAND—CESSER OF LIFE ESTATE IN TENANT'S LIFETIME—NO VESTING DEED—S.L.A., 1925, ss. 7 (5), 13—TITLE.

907. *Q.* On 30th December, 1908, an assignment of certain leasehold property was executed by A in favour of B, C and D. Under the assignment the property was to be held by B, C and D upon trust to pay the net income arising therefrom to B (daughter-in-law of A, the husband of B still being alive) until such time as E and F, children of B, should attain the age of twenty-one years, and upon E and F attaining the age of twenty-one years, upon trust for the said E and F absolutely. E and F have now both attained the age of twenty-one years F having attained that age within the last month. It would seem that on 1st January, 1926, the leasehold property became settled property and that B was the tenant for life in whom the legal estate would become vested on that date, and it would also seem that the trusts of the settlement have terminated except so far as any steps have to be taken to vest the property in E and F. The assignment of 30th December, 1908, does not declare that B, C and D are trustees for the purposes of the S.L.A., 1882 to 1890, or any of them, neither does the assignment give to B, C and D any power of sale. E and F now wish to sell the leasehold property, and the question arises as to the manner in which they can give a good title. It is contended that at the present time there are no trustees for the purposes of the S.L.A. within the provisions of s. 30, and particularly s. 30 (1) (v) of the S.L.A.,

1925, and that it will be necessary in order to carry out the sale to make an application to the court for the appointment of such trustees. This contention is based on the argument that the legal estate in the leasehold property is at present vested in B, the tenant for life, and that notwithstanding the interest of B under the trusts of the settlement has ceased, B is not in a position to deal with the property in any way until a vesting instrument in her favour has been executed. Answers to the following questions are desired :—

(1) Are B, C and D trustees for the purposes of the S.L.A. ?

(2) If not, is it necessary that such trustees should be appointed before the sale of the leasehold property can be carried out so that a vesting instrument can be executed by the trustees in favour of B ?

(3) Can B, as tenant for life, apart altogether from the trustees, convey the land to E and F under s. 7 (5) of the S.L.A., 1925 ?

(4) Can B, C and D, as assignees under the assignment of 30th December, 1908, and B, as tenant for life under that assignment, convey the property to E and F altogether apart from the provisions of the S.L.A., 1925 ?

(5) In the event of its being necessary to have trustees appointed for the purposes of the S.L.A., must those trustees execute a deed of discharge under s. 17 (1) of the S.L.A., 1925 ?

A. (1) No.

(2) and (3) The answers to these questions depend upon the right interpretation of s. 13 of the S.L.A., 1925, which is a matter of some difficulty. The nearest authority is *re Alefounder*, 1927, 1 Ch. 360, *ante*, p. 123. On the first point in *re Alefounder*, that the land has ceased to be settled land, the case might be held to cover the present one, but it may be argued that it would not on the second point, because the disposition required is a conveyance from B to E and F under s. 7 (5), and that is a disposition under the Act within s. 112 (2), to which s. 13 therefore applies. The opinion here given is that the land having ceased to be settled land if B, who is now a bare trustee of the legal estate, conveys that estate by direction of E and F when E and F have sold their interests to a purchaser, a good title will be made. It is difficult to see how S.L.A. trustees can be appointed when the settlement has ceased to exist.

(4) No ; B and C were divested of their estates by the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 7 (*i*).

(5) The settlement has ceased to exist.

MORTGAGE ON LEASEHOLDS—PURCHASE OF REVERSION SUBJECT TO LEASE BY MORTGAGOR—PAYMENT OFF—CONVEYANCE OF FREEHOLD AND LEASEHOLD INTERESTS —TITLE.

908. *Q.* A acquired property held under two leases for terms of 999 years respectively. In the case of one term there was a nominal reversion of one day outstanding in consequence of mortgagees by sub-demise having sold to A under their power of sale. A mortgaged the property to B for the unexpired residue of one term and for the residue of the other term, less one day. Subsequently A purchased from C the freehold reversion expectant on the determination of the two terms. The property then being in mortgage it was not possible for the conveyance to A to contain a declaration of merger, and in the circumstances C conveyed the property to A in fee simple "subject to and with the benefit of the said leases and the rents thereby respectively reserved and the covenants and conditions therein respectively contained and on the part of the lessee to be observed and performed." A later paid off the mortgagees and took a re-assignment from his mortgagees, and subsequently sold the property comprised in the two leases in lots. In the conveyances to the various purchasers the property was expressed to be conveyed in fee simple "subject to and with the benefit of the said leases and to the rents thereby respectively reserved and to the covenants and conditions therein respectively contained and on the part of the lessee to be observed and performed" and also to the covenants, etc., contained in the conveyance of the freehold reversion. This followed out the terms of the conveyance from C to A. A purchaser from A has recently re-sold his lot, and the purchaser's solicitors contend that the two terms are outstanding in A and that he must be a party to the conveyance for the purpose of assigning the terms to the purchaser. Is their contention correct ? It may be mentioned that all the purchasers from A with one exception obtained advances through building societies, who accepted the title without requisition ?

A. The contention of the purchaser's solicitors is not in accordance with s. 63 of the Conveyancing Act, 1882, if A's conveyance was before 1926, or s. 63 of the L.P.A., 1925, if after. A conveyed the property with the benefit of the lease, which, being vested in him, thereby passed.

SETTLED LAND—TENANT FOR LIFE—PERSON ENTITLED TO RESIDE ONLY—SALE—TITLE.

909. *Q.* A, who died in 1926, gave to B and C, his executors and trustees, his leasehold house upon trust to allow his wife D during her life the use and enjoyment thereof for so long as she might desire, she keeping the same in repair and insured with a request that she should allow the children to reside therein with her, and after D notifying his trustees that she no longer desired to live in the house or from and after her ceasing to reside there for six months, whichever should first happen, then the house should be sold by his trustees at such time in such manner and for such price as his trustees should think fit, and the proceeds thereof should be invested in the trustees' names and the income paid to D during her life to enable her to rent another house, and after the death of D the house or investments of the proceeds, if the same should be sold, should form part of his residuary estate, provided that the trustees should at any time after the sale of the house if so requested by D lend the money to her on mortgage of any freehold house she might purchase for her own residence, and further, if D should cease to reside in testator's dwelling-house his trustees might in lieu of selling same let it for such period and at such rent as they should think fit, and that the net rents therefrom should be paid to D during her life. D has obtained a tenancy of a flat and has intimated in writing she no longer wishes to reside in the house. It is now desired to sell the house. Please say upon the facts (*a*) if B and C can sell as legal personal representatives of A, or (*b*) as trustees under the will, or (*c*) having regard to S.L.A., 1925, ss. 20 (viii) and 106, should D sell as the person having the powers of a tenant for life after the usual vesting assent by B and C in her favour ?

A. (*a*) Yes, if no memorandum of assent is endorsed on the probate under the A.E.A., 1925, s. 36 (5), on recital that none has been made, under sub-s. (6).

(*b*) Yes, if and when as executors they have assented to the settled devise to themselves as trustees for sale, but as to such assent, see below.

(*c*) The cases as to conditions of residence *vis-à-vis*, s. 51 of the S.L.A., 1882, corresponding to s. 106 of the S.L.A., 1925, will be found collected and discussed in questions 267, p. 581, vol. 70, and 780, pp. 387-388, *ante*. The general effect is that a gift over on cesser of residence, or refusal to reside, is only void so far as it obstructs the free exercise of the powers under the Act, and may take effect if the tenant for life breaks the condition otherwise than by exercise of such powers : see *Re Trenchard*, 1902, 1 Ch. 378, to which the present case has some resemblance. Accordingly, the opinion is here given that, on receipt of D's notice, the gift over to the trustees upon trust for sale took effect, and that the executors may therefore assent or convey to themselves as trustees for sale ; see S.L.A., 1925, s. 7 (5). If they adopt this course the suggestion is made that they should convey with the concurrence of the widow, who would then be bound by the recital as to the cesser of her interest, a fact which might avoid requisition. The provision as to letting the house is, of course, perfectly

consistent with an immediate binding trust for sale, see L.P.A., 1925, ss. 25 (1) and 28 (1).

Pre-1926 Mortgage of Leaseholds—Sale of Part under Power—L.P.A., 1925, s. 89 (6)—L.P. (Am.) A., 1926.

910. *Q.* By a lease dated 27th April, 1877, a plot of land containing 622 square yards was demised by the lessor to the lessee for a term of ninety-nine years from the 1st May, 1876 subject to a yearly ground rent of £2 11s. 10d. and to the covenants and conditions therein contained. The property was subsequently, in the same year, mortgaged by demise to a building society for the residue of the term granted by the lease (except the last three days thereof). By an assignment in 1885, the building society, in pursuance of their power of sale, assigned to a purchaser, A, the plot of land comprised in the lease except a small piece containing twenty odd square yards, which by the assignment it was recited, had been agreed to be sold by the building society under an agreement dated 1884 under which the building society undertook to execute an assurance of such small piece of land to the purchasers thereof when required. The assignment by the building society to A was for the residue of the term created by the lease, except the last three days, subject to the payment of the rent and the covenants and conditions reserved by and contained in the lease. The premises comprised in the assignment of 1885 subsequently became vested in B, who in 1923 mortgaged to C by way of assignment for the residue of the term created by the lease (except the last three days). C is now selling the property to a purchaser for whom we are acting, and has contracted to assign for the same term, namely, the term granted by the lease (except the last three days thereof). By the L.P.A., 1925, Sched. I, Pt. VIII (1), presumably the property is now vested in C for a term equal to that assigned to C by the mortgage, less the last ten days thereof, that is to say, for the residue of the term granted by the lease, less thirteen days. It will be observed that the property in mortgage to C is part only of the property comprised in the lease, but is subject to the whole of the rent reserved by the lease, and there has been no apportionment of rent or of covenants and conditions as between the owners of the property comprised in C's mortgage and the owner of the remainder of the land comprised in the lease. In view of s. 89 (6) of the L.P.A., 1925, can C only assign to the present purchaser the property comprised in his mortgage for the residue of the term granted by the lease, less the last thirteen days, or has s. 89 (6) no bearing on this case, and is C in a position to assign the premises comprised in the mortgage to the present purchaser for the term assigned to C by the mortgage, namely, the term of years granted by the lease, less the last three days thereof? Does the term "leasehold reversion" referred to in that section mean the leasehold reversion created by the Act, because, if so, the mortgage term created by the Act would appear to comprise the whole of the land included in the leasehold reversion in the case which we put, and therefore C would not be prohibited by s. 89 (6) from assigning the full term which was assigned to C, namely, the term granted by the lease, less the last three days.

A. If for over forty years A and his assigns have paid the whole of the ground rent under the lease, and the persons entitled to the smaller plot have paid nothing, the opinion here given is that there has been an apportionment by implication within the L.P.A., 1925, s. 89 (6), as amended by the L.P. (Am.) A, 1926, Sched. If this is right, a sale by C will operate under s. 89 (1) to vest the term, less the three days, in the purchaser.

Certificate under the F.A., 1910 (1909-10), s. 73—"Series of Transactions."

911. *Q.* A, on the 3rd June, entered into a contract to purchase from B the leasehold interest in certain property. On the 10th June he entered into a contract to purchase from C the freehold reversion upon the lease of the property purchased from B. Each purchase was negotiated through the same estate agent, and A made an arrangement with the estate agent that if he got one property without the other, the estate agent would re-sell it for him without charging commission. The consideration money in the purchase from B exceeded £500, but in the purchase from C was less than £500. Having regard to the fact that the vendors are entirely independent persons, and that each can enforce his contract against A without reference to the other, can a certificate under s. 73 be inserted in the conveyance from C, or is the above one transaction within the meaning of s. 73?

A. Section 73 of the F.A., 1910 (1909-10), does not appear to have been the subject of reported decision, but the opinion is here given that the purchase of freehold and leasehold interests in the same plot of land is a "series of transactions" within s. 73, by which the purchaser acquires, or attempts to acquire, the fee simple in possession. An analogous case would be if he separately bought up the interests of a number of persons who were equitable tenants in common until the whole equitable interest was vested in him. Some opinions of the Council of the Law Society on s. 73 will be found vol. 54, p. 858, but not on this specific point. Adjudication is suggested if this opinion is not acceptable.

Charity—Sale of Land—A Trustee's refusal to concur—*Q.* 881, p. 630, *ante.*

Q. We have perused the above question and answer thereto, and shall be glad to hear whether s. 12 of the Charitable Trusts Act, 1869, has not been overlooked. Trustees of a charity under this section have ample power to act by the majority and to execute all necessary deeds.

A. Our correspondents are thanked for calling attention to the above section, which is applicable in the circumstances stated in *Q.* 881, and which, as they surmise, was unfortunately overlooked in the answer. Conveyance can therefore be made by the fourteen trustees. Regret is expressed for the mistake.

Court of Appeal.

No. 1.

Hardie & Lane Ltd. *v.* **Chilton and Others.**

22nd, 23rd and 29th June.

Practice—Parties—Action in Tort—Joint Defendants—Claim against Defendants personally and as representing Trade Union—Representative Claim Struck Out—No Common Interest—Trade Union not Liable in Tort—Ord. 16, r. 9—Trades Disputes Act, 1906, 6 Edw. 7, c. 47, s. 4.

An action was brought against three persons for damages for tort, consisting of conspiracy and libel, and also for money had and received, such money having, it was alleged, been extorted under illegal threats against the plaintiffs. The claim was made against the defendants (a) *personally, and* (b) *as representing and having the control of the Motor Trade Association, an unregistered trade union for the protection of the motor trade, of which the plaintiffs were members.*

Held, that the writ and statement of claim must be amended by striking out the claim against the defendants in their representative capacity, and against the association. There was no common interest in the subject-matter of the action between the defendants and the association, so as to bring the case within Ord. 16, *r.* 9, *and as the association was a trade union, although not one either of masters or workmen, it could not be made liable in tort.*

Decision of Fraser, J., *affirmed.*

Appeals from Fraser, J., affirming two orders of Master Jelf, one dismissing the action brought against the defendants in their representative capacity, and the other amending the

writ and statement of claim by striking out all references to the claim as made against the defendants, as representing the Motor Trade Association. The statement of claim alleged that the association purported to carry on business for the purpose of encouraging and protecting the motor industry in the United Kingdom and throughout the world and to watch over and protect the interests of manufacturers, etc. The defendants, Chilton, Bennett, and Denyer, substantially owned and controlled the business and undertaking of the association and such business was in truth and in fact carried on for their profit and benefit. The statement of claim then stated that the plaintiffs became members of the association, and alleged a conspiracy between the defendants and one, Neale, to induce the plaintiffs by fraudulent representations, to break a bye-law of the association with regard to the maintenance of prices. As the result of the alleged conspiracy the plaintiffs were induced to pay to the defendants the sum of £332, and to give an undertaking to maintain the protected prices. Fraser, J., held that the defendants could not be sued in a representative capacity as members of the trade union, and that there was no common interest in the cause of action between the members of the association and the defendants, so as to bring the case within Ord. 16, r. 9. The plaintiffs appealed. *Cur. adv. vult.*

Lord HANWORTH, M.R., said that the statement of claim had declared three causes of action—(*a*) conspiracy; (*b*) libel; and (*c*) money had and received. Sir Henry Slesser, during the argument, had decided to abandon all claims for libel, and, if the action proceeded, the statement of claim would have to be amended accordingly. The third claim, for money had and received, depended on whether the plaintiffs could abandon the conspiracy declared by the statement of claim, which was said to be the basis of the acts done by the defendants, and whether they could base their claim for that sum upon an *indebitatus* account alone. For the reasons given by the court in the case of *Brocklebank, Limited* v. *the King*, 1925, 1 K.B. 52, the plaintiffs could not vary their claim in that way. On the facts alleged, the cause of action stood upon conspiracy and duress, and the plaintiffs could not dissociate their claim from those facts and rest it upon a money basis only. As a result, therefore, the claim for conspiracy alone remained. After carefully reading the judgment of Fraser, J., he (the Master of the Rolls) thought that that judge had dealt fully with the question of the defendants in their capacity as representatives of the Motor Trade Association, alleged to be within the ambit of Ord. 16, r. 9. He desired to associate himself with Fraser, J.'s reasoning. He would only add that, by reg. 14, no member of the Motor Trade Association incurred any liability beyond payment of his subscription, and, by later words, he was expressly exempted from liability for the acts of other members or officers of the association. The association was a shifting body, some members coming in and some leaving it. The words of Lord Parker in *London Association for Protection of Trade* v. *Greenlands, Limited*, 1916, 2 A.C. 15, and of Swinfen Eady, L.J., in *Mercantile Marine Service Association* v. *Toms*, 1916, 2 K.B. 243, indicated that in the present case there was no ground for saying that the members of the association had the same interest in the action, or the same defence to it, as the three named persons, or that they came within the ambit of Ord. 16, r. 9. The appeal must, therefore, be dismissed upon that ground. There had been an earlier question raised by the defendants which had been argued by both sides. The action was for conspiracy, and s. 4 of the Trades Disputes Act, 1906, said:—"An action against a trade union, whether workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court." Those words were clear and direct. In *Vacher and Sons, Limited* v. *London Society of Compositors*, 1913, A.C. 107, it was held that the section was not limited to tortious acts committed in contemplation or furtherance of a trade dispute, but extended to all torts. Sir Henry Slesser had presented an ingenious argument, to the effect that the words "whether of workmen or masters" were words of limitation and limited the unions entitled to ask for immunity to those composed of workmen or masters, which did not include the Motor Trade Association, whose object was "the imposing of restrictive conditions on the conduct of any trade or business." But that was a "statutory object" under s. 1 (2) of the Trade Union Act, 1913, and the definition of "trade union" under s. 2 of the Act was "any combination . . . the principal objects of which are under its constitution statutory objects." That definition applied to a trade union under the Act of 1906. The Motor Trade Association was within it, and was entitled to the immunity given by the section. In the plain meaning of the English used he found great difficulty in construing the words "whether of workmen or masters" as words of limitation. The tests of a trade union were its objects, not its *personnel*. The speeches of the Lords in *Vacher's Case* all indicated that the section was to receive the wide meaning that its words appeared to carry. The appeals must, therefore, be dismissed, with costs.

SARGANT, L.J., and LAWRENCE, L.J., delivered judgment to the same effect.

COUNSEL: *Sir H. Slesser*, K.C., and *Harold Simmons*; *Sir J. Simon*, K.C., and *Giveen*; *Merriman*, K.C., and *St. John Field*.

SOLICITORS: *C. S. Tomlinson*; *Kenneth Brown, Baker, Baker & Co.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **National Benefit Assurance Co.** Eve, J. 31st May.

INSURANCE—MARINE INSURANCE—TWO COMPANIES—PARTICIPATION IN RISKS—NO STAMPED POLICIES—INVALIDITY OF CONTRACT.

Two companies entered into a contract under which in return for a proportion of the premiums paid to cover marine risks, one of the companies agreed to indemnify the other company against a corresponding proportion of any loss incurred. The contract was not expressed in a policy.

Held, that the contract was a contract for sea insurance, and, not being expressed in a stamped policy, was invalid.

This was an adjourned summons, by which the English Insurance Company, Limited, sought to set aside the rejection by the liquidator of the National Benefit Assurance Company of a proof carried in by it in the winding up of the National Company, on the ground that the debt thereby sought to be established arose out of a contract for sea insurance, in respect of which no stamped policies of marine insurance were issued to the English Company. The contract was described as a participation agreement, and provided that the National Company should be entitled to and should accept a quota participation equal to one-eighth share of all and every risk arranged by the English Company upon any marine insurance or upon any war risks accepted through their marine department. The expression "marine insurance," as used in the agreement, meant all forms of insurance, including war risk and re-insurance transacted by the marine department of the English Company. It was not disputed that if the contract was properly described as a contract for sea insurance, it was invalid in that it did not comply with the provisions of the Stamp Act, 1891, s. 93, or the Marine Insurance Act, 1906, ss. 22, 23. The only question for the determination of the court was the construction of the contract, that is, whether it was a contract of marine insurance.

EVE, J., after stating the facts, said that such were the relevent terms of the contract which he had to construe, but he ought not to omit to mention two passages which were

relied upon as indicating some doubt on the part of the contracting parties as to the efficacy of their bargain in all circumstances. Article 10 began with these words: "This being an agreement executed in a spirit of trust, the participator is bound in every case to follow the fortunes of the English Company." And in the arbitration clause, it was agreed that all disputes should be settled by an equitable and liberal interpretation of the agreement according to the spirit thereof, and that the arbitrators might abstain from following the strict rule of the law. The document, it had been suggested, was one whereby the English Company was appointed the agent of the National Company for effecting insurances, or alternatively as being one in the nature of a partnership agreement. But whatever be the particular appellation to be applied to it, there could not be any real doubt as to its true character. It was intended to cover marine risks. It was a contract of re-insurance under which, in return for a proportion of the premiums paid to cover marine risks, the National Company was bound to indemnify the English Company against a corresponding proportion of any loss. It was therefore a contract for sea insurance, and not being expressed in a policy, it was invalid in that the only form of contract of sea insurance which the law allowed was a duly stamped policy. The summons therefore would be dismissed with costs.

COUNSEL: *Porter*, K.C., and *Andrewes-Uthwatt; Dunlop*, K.C., and *L. W. Byrne.*

SOLICITORS: *Parker, Garrett & Co.; William A. Crump and Son.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Witts *v.* **Mackay and Others.**

Acton and Talbot, JJ. 18th May.

EDUCATION — SCHOOL TEACHERS' SALARIES — BURNHAM REPORT—"CARRY OVER"—HOW COMPUTED—UNSATISFACTORY SERVICE—BURNHAM REPORT ON STANDARD SCALES OF SALARIES FOR TEACHERS IN PUBLIC ELEMENTARY SCHOOLS, Cl. 9 (*e*).

A head teacher became entitled to an increase of £46 19*s. on the adoption of the Burnham report by her education authority. It was agreed that the sum should be paid in three equal instalments over a period of three years.*

Held, that the education authority had no right to withhold one of those instalments on the ground of unsatisfactory service after the adoption of the Burnham Report as distinct from such service anterior to the adoption of the report.

The appellant in this action, Louisa Mary Witts, a certificated school teacher, appealed against a decision of the judge of the Sheffield County Court in a case involving the interpretation of one of the clauses of the Burnham report on standard scales of salaries for teachers in public elementary schools. The respondents were the Rev. H. W. Mackay, the Rev. Harold Ewbank, and the Rev. W. G. Largie, the managers of St. Silas School, Sheffield, of which the appellant was the head teacher, and the Sheffield Corporation the local authority. In the court below the present appellant had claimed an instalment of the "carry over" to which she said she was entitled under cl. 9 of the Burnham report, which provides: "All teachers shall be brought to their correct positions on the standard scale adopted by the authority in the following manner . . . (*e*) Nothing in this Report is intended to preclude an authority from dealing specially, for the purposes of the 'carry over,' with the case of a teacher whose service has been declared to be unsatisfactory and continues to be so regarded, provided always that no teacher shall be penalised in respect of years of satisfactory service." The "carry over" meant the difference between the salary which a teacher would have received at the date of the adoption of the report by his education authority if, throughout his service, the Burnham scale had been in operation, and the salary which at that date he was in fact receiving. The appellant was appointed head teacher of St. Silas School in 1904, and was re-engaged under a new agreement in 1925. The Burnham report was adopted by the Sheffield Corporation education authority on the 28th February, 1921, and the appellant became entitled to an increase of £46 19s. It was agreed that to relieve the strain on the education authority's finances the payment of the increases should be divided over a period of three years. Owing to the unsatisfactory work of pupils of St. Silas School who competed for secondary school scholarships in 1922 and 1923, the education committee and the managers complained to the appellant that her service had not been satisfactory, and that they were therefore unable to recommend that the third instalment of her "carry over," due on the 31st March, 1924, be granted to her. The county court judge gave judgment against her on a claim for the third instalment amounting to £15 13s., and she now appealed against this decision.

ACTON, J., giving judgment, referred to counsels' arguments and said that in his opinion the county court judge had taken an erroneous view of the true construction of cl. 9. The introductory words "All teachers shall be brought to their correct positions . . ." were the controlling words of the clause and indicated that the clause primarily dealt with the manner of computing each teacher's "carry over." His lordship referred to the method of calculating the "carry over" and said that for the purpose of that computation the term of service would be assumed in the first place to have been satisfactory. There might be cases where a teacher's service had been declared unsatisfactory before the adoption of the report, and it had been contended for the appellant that the words "has been declared" in para. (*e*) of cl. 9 related only to a declaration of unsatisfactory service anterior to the adoption of the Burnham report. In his opinion that view was correct and the appeal must be allowed, with costs.

TALBOT, J., concurred. Leave to appeal was given.

COUNSEL: For the appellant, *Willoughby Jardine*, K.C., and *A. A. Thomas*; for the respondents, *R. Montgomery*, K.C., *Paley Scott* and *W. A. Macfarlane.*

SOLICITORS: *Eric G. Floyd; Rollit, Sons & Haydon*, for *Sir William Hart*, Town Clerk, Sheffield.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Money *v.* **Money and Turner.** Hill, J. 20th May.

DIVORCE—REGISTRAR'S MARRIAGE IN IRELAND PRIOR TO IRISH FREE STATE—CERTIFICATE PROOF OF MARRIAGE—MARRIAGES (IRELAND) ACT, 1844, 7 & 8 Vict., c. 81, ss. 30, 66, 71 and 84—EVIDENCE ACT, 1851, 14 & 15 Vict., c. 99, s. 10.

A marriage before a registrar in Ireland prior to the constitution of the Irish Free State is proved by production of the certificate.

This was an undefended petition for dissolution in which the petitioner husband asked for the discretion of the court to be exercised in his favour. The parties were married on the 19th November, 1920, in Dublin, before a registrar. Counsel for the petitioner tendered a copy of the registrar's entry in respect of the marriage as certified by the Registrar-General in Ireland and submitted that it was *ex facie* sufficient proof of the marriage. He referred to the Marriages (Ireland) Act, 1844, ss. 30, 66, 71 and 84, and to the Evidence Act, 1851, s. 10; apparently the previously reported cases all related to marriages celebrated in places of worship in Ireland, but he submitted that, on the statutes, the same principles applied to marriages before a registrar.

HILL, J., after examining the statutes: I am satisfied that it is so. Decree *nisi*. Costs against the co-respondent.

COUNSEL: *H. B. Durley Grazebrook* for the petitioner.

SOLICITORS: *Bein & Lawrence.*

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

Societies.

The Law Society.

PROVINCIAL MEETING AT SHEFFIELD.

We understand that it is proposed to confer the honorary degree of LL.D., on the occasion of the visit of The Law Society to Sheffield at the end of September, upon the following distinguished members of the profession, viz:—

Lord Hewart, Lord Chief Justice of England; Mr. C. A. Coward, President of The Law Society of England; Sir William Hart, Town Clerk of Sheffield; Mr. Edward Bramley, President of the Sheffield District Incorporated Law Society and Chairman of the Yorkshire Board of Legal Studies; Mr. J. H. Hichens.

Legal Notes and News.

Honours and Appointments.

Mr. DAVID DOUGLAS REID has been appointed one of the Conveyancing Counsel of the Supreme Court in the place of the late Mr. William Michael Spence. Mr. Reid was called by Lincoln's Inn in 1898.

Mr. C. H. ARBOW has been appointed Clerk to the Cottingham (Yorks) Urban District Council in succession to Mr. J. S. Moss Blundell, who has resigned after fifty years' service.

Mr. THEOBALD MATHEW, Recorder of Margate, has just been appointed Recorder of Maidstone in succession to Mr. E. W. Hansell, K.C. Mr. Mathew was called by Lincoln's Inn in 1890.

Mr. GEORGE MALCOLM HILBERY has been appointed Recorder of Margate. Mr. Hilbery was called by Gray's Inn in 1907.

Mr. BERNARD CAMPION, K.C., has been appointed Recorder of Northampton, to succeed Mr. C. E. Dyer, K.C., who has resigned. Mr. Campion was called by Gray's Inn in 1899, and took silk in 1923.

Mr. DAVID STENHOUSE, Senior Town Clerk Depute of Glasgow, succeeds Sir John Lindsay as Town Clerk of that city; whilst Mr. J. L. MACKENZIE is to be Senior Town Clerk in place of Mr. Stenhouse.

Professional Partnership Dissolved.

JAMES ROBERT CARDEW SMITH and CHARLES GORDON ROSS, 27, Ely-place, have, as from 29th July, ceased to be interested in the business of solicitors carried on at Council-chambers, Rickmansworth, under the style of Cardew Smith, Ross and Batchelar. H. W. Batchelar will continue the business at the same address under the style of H. W. Batchelar.

Wills and Bequests.

Mr. John Hodge, solicitor, of Weston-super-Mare, Somerset, left estate of the gross value of £27,229.

Mr. Edmund Thomas Child, solicitor, of Plowden-buildings, Temple, E.C., and The Tors, Highbury-road, Wimbledon, S.W., who died on 10th June, left estate of the gross value of £37,355. He left £1,000 each to St. Andrew's Hospital, Dollis Hill, and the Hospital of St. John and St. Elizabeth, Grove End-road; £500 to The Law Society, the income to be applied for prizes to candidates at the final examination; £500 towards the mosaic embellishment of Westminster Cathedral; £100 each to North Wimbledon Hospital, the South Wimbledon Hospital, the Little Sisters of the Poor, St. Peter's House, South Lambeth, the Society of the Crusade of Rescue, Harrow-road, the Providence Night Refuge, and the Central Home for the Poor Mentally Defective Children, Worcester.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

CLOSING A BRANCH OF A SEAMEN'S UNION.

Mr. Justice Clauson, in the Vacation Court, on Tuesday, declined to accede to a motion which asked for interim relief in an action in which Mr. Henry Thomas Bond, Mr. Matthew Kennedy, and Mr. Peter Lang, suing on behalf of themselves and all other members of the Victoria Dock-road branch of the National Union of Seamen, claimed from that union and from Mr. J. Havelock Wilson, the general president, a declaration that a letter written by Mr. Wilson which purported to close the branch office of the union at 343, Victoria Dock-road, E.16, was *ultra vires* and illegal, and an injunction to restrain Mr. Wilson from interfering with the keeping open of the office.

Mr. Malcolm Hilbery, who appeared for the plaintiffs, in moving, said that under the rules of the Union each local branch was a unit of administration. Mr. Havelock Wilson, as the general president of the Union, had a duty to open local branches and to close those which did not pay, subject to the sanction of the executive council. In the present case there was no evidence that the executive council had sanctioned what he had done. Members of a branch had vital interests from day to day in the area in which their branch operated, and it was difficult to imagine where there was more vital work to be done by a seamen's union than in the Victoria Dock-road. Mr. Havelock Wilson had, however, written a letter in which he said that he had closed the branch in question. Mr. Bond, who at the time was the local branch secretary, challenged his power to do so, continued his work at the branch, and invoked the protection of the court.

Mr. Justice Clauson: Is it not a matter of the internal management of this society?

Mr. Hilbery said that, in cases where the officials of a union had proposed to deal with the funds of the union, members could come to the court to protect those funds. That was analogous to the present case.

Mr. Roxburgh (who represented the defendants), replying to his lordship, said that the union did not complain of anything which Mr. Wilson had done.

His lordship said that the only order which he could make was that there should be no order on the motion except that the defendants' costs be costs in the action.

"GRAY'S INN" MAGAZINE.

Some months ago mention was made in these columns of the possibility of a periodical being issued in connection with Gray's Inn, as the result of a resolution passed at a meeting, on the proposal of Mr. J. Leonard Crouch, supported by Mr. Healy. We now understand that the project will be put into effect by the publication in the Michaelmas term of the first number of "Graya," under the honorary editorship of Mr. E. H. Butcher, and the supervision of a committee of which Sir D. Plunket Barton, a former judge of the High Court of Justice, Ireland, and an authority on legal matters, is chairman. The venture is quite a novel one so far as the Inns of Court are concerned, though publications of a similar kind have long been established in connection with the universities.

"Graya" will be largely devoted to recording the doings of the many societies connected with the Inn, but it will also comprehend topical notes, correspondence, and contributions from members. Old members of the Inn now resident abroad will doubtless find it interesting, and a binding link with old associations. The second number will be issued during the Easter term, 1928.

LORD HEWART AND MOTORISTS.

Rex v. *James Heggie Burdon.*—In dismissing the appeal of James Heggie Burdon, who had been sentenced at the Middlesex Sessions to twenty-two months imprisonment in the second division on conviction for causing bodily harm by wantonly driving a motor car, the Lord Chief Justice said that, having regard to the frequency and the gravity of offences of the kind and to the notorious state of the public highways, the court saw no reason for interfering with the sentence, which was, no doubt, a stiff one.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

A UNIVERSAL APPEAL.

To LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.

Court Papers: Vacation Notice.

High Court of Justice.

LONG VACATION, 1927.—NOTICE.

During the Vacation, up to and including Monday, 5th September, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice CLAUSON.

COURT BUSINESS.—The Hon. Mr. Justice CLAUSON will, until further notice, sit in the Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wendesday, in every week, commencing on Wednesday, 3rd August, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

No case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the Vacation Judges (see notice below as to Judges' Papers), are to be left with the Cause Clerk in attendance, Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock two days previous to the day on which the application is intended to be made.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above a copy of the writ must also be sent.

The Papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chambers of Mr. Justice ASTBURY and Mr. Justice CLAUSON will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice CLAUSON will until further notice sit for the disposal of King's Bench Business in Judge's Chambers at 10.30 a.m. on Tuesday in every week, except the first week, when the Judge will sit on Thursday, 4th August.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 10th and 24th August and the 7th and 21st September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on Wednesdays, the 3rd, 17th and 31st August, and 14th and 28th September.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

JUDGE'S PAPERS FOR USE IN COURT.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the Judge.

(2) Two copies of writ and two copies of pleadings (if any).

(3) Two copies of notice of motion, one bearing a 10s. impressed stamp.

(4) Office copy affidavits in support, and also affidavits in answer (if any).

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

VACATION REGISTRAR.—Mr. SYNGE (Room 188).

Chancery Registrars' Office,
Royal Courts of Justice.
July, 1927.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 25th August, 1927.

	Middle Price 17th Aug.	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	84¾	4	14	6	—		
Consols 2½%	54¾	4	11	6	—		
War Loan 5% 1929-47	101¾	4	18	6	4	19	0
War Loan 4½% 1925-45	97	4	13	6	4	17	0
War Loan 4% (Tax free) 1929-42	101½	3	19	0	3	19	6
Funding 4% Loan 1960-90	86¾	4	12	0	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94¼	4	5	6	4	9	0
Conversion 4½% Loan 1940-44	97½	4	12	0	4	15	6
Conversion 3½% Loan 1961	76⅝	4	11	0	—		
Local Loans 3% Stock 1921 or after	63¾	4	14	0	—		
Bank Stock	255½	4	14	0	—		
India 4½% 1950-55	93¾	4	16	0	4	19	0
India 3½%	71	4	18	6	—		
India 3%	61	4	18	6	—		
Sudan 4½% 1939-73	92¾	4	17	0	4	18	0
Sudan 4% 1974	84½	4	15	0	4	18	6
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years)	80¾	3	14	0	4	12	6
Colonial Securities.							
Canada 3% 1938	84½	3	11	6	4	18	0
Cape of Good Hope 4% 1916-36	93½	4	5	6	5	0	0
Cape of Good Hope 3½% 1929-49	80	4	8	6	5	0	6
Commonwealth of Australia 5% 1945-75	98¼	5	2	0	5	2	6
Gold Coast 4½% 1956	93½	4	16	0	4	18	0
Jamaica 4½% 1941-71	92½	4	17	6	4	19	0
Natal 4% 1937	93¼	4	6	0	4	19	6
New South Wales 4½% 1935-45	90⅜	5	0	0	5	8	0
New South Wales 5% 1945-65	98	5	2	0	5	4	0
New Zealand 4½% 1945	95	4	15	0	4	18	0
New Zealand 5% 1946	102⅛	4	18	0	4	18	6
Queensland 5% 1940-60	99	5	1	0	5	3	6
South Africa 5% 1945-75	102¼	4	18	0	4	18	6
S. Australia 5% 1945-75	98¼	5	2	0	5	3	0
Tasmania 5% 1945-75	99½	5	1	0	5	1	6
Victoria 5% 1945-75	99½	5	0	6	5	2	6
W. Australia 5% 1945-75	98¼	5	2	0	5	3	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	63	4	15	6	—		
Birmingham 5% 1946-56	103½	4	17	6	4	17	0
Cardiff 5% 1945-65	102¼	4	18	0	4	18	6
Croydon 3% 1940-60	69¼	4	7	6	5	0	0
Hull 3½% 1925-55	77¾	4	10	0	5	0	0
Liverpool 3½% on or after 1942 at option of Corpn.	73	4	16	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½	4	15	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62¾	4	16	0	—		
Manchester 3% on or after 1941	62¾	4	15	6	—		
Metropolitan Water Board 3% 'A' 1963-2003	63	4	15	6	4	17	6
Metropolitan Water Board 3% 'B' 1934-2003	63⅝	4	14	0	4	16	0
Middlesex C. C. 3½% 1927-47	82	4	5	6	4	17	0
Newcastle 3½% irredeemable	72	4	17	6	—		
Nottingham 3% irredeemable	63	4	15	6	—		
Stockton 5% 1946-66	101	4	19	0	4	19	6
Wolverhampton 5% 1946-56	102	4	17	6	4	18	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	80	5	0	0	—		
Gt. Western Rly. 5% Rent Charge	98	5	2	0	—		
Gt. Western Rly. 5% Preference	92xd	5	8	6	—		
L. North Eastern Rly. 4% Debenture	74½	5	7	6	—		
L. North Eastern Rly. 4% Guaranteed	68¾xd	5	16	6	—		
L. North Eastern Rly. 4% 1st Preference	62xd	6	8	6	—		
L. Mid. & Scot. Rly. 4% Debenture	79	5	1	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	76xd	5	5	0	—		
L. Mid. & Scot. Rly. 4% Preference	71¼xd	5	12	0	—		
Southern Railway 4% Debenture	78	5	2	0	—		
Southern Railway 5% Guaranteed	95xd	5	5	0	—		
Southern Railway 5% Preference	88xd	5	13	6	—		

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This list will be extended, and further particulars published from time to time.

The Points in Practice department of the paper will be of the greatest service to you.

Extracts from some appreciatory letters typical of the many we have received from Subscribers:—

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"Please accept our best thanks for your letter of the 28th May enclosing a reply to our query, which is most helpful."
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"I thank you for your letter of yesterday's date enclosing reply to query which will certainly be helpful."
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All inquiries should be forwarded to:—

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